

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

JOSEPH KOGOK TRUST
Respondent

Case No.: I-02-72149

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 – 2-1802.05, and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). On May 22, 2002, the Government served a Notice of Infraction on Respondent the Joseph Kogok Trust alleging that it violated 21 DCMR 707.9 for improper grease management (the “Regulation”).¹ The Notice of Infraction alleged that the violation occurred on May 8, 2002, at 1239 Mount Olivet Rd., N.E. (the “Property”), and sought a fine of \$1,000.

On June 10, 2002, Thomas C. Hier, Trustee of the Joseph Kogok Trust (the “Trustee”), filed an answer of Admit with Explanation on behalf of Respondent, pursuant to D.C. Official Code § 2-1802.02(a)(2), with a request for the suspension or reduction of the prescribed fine. The Trustee represented that Respondent owned the Property and leased it to a carryout

¹ 21 DCMR 707.9 provides: “Grease held for recycling or disposal shall be stored in a tightly-sealed metal drum with a capacity of not more than 55 gallons. The grease container and the area where the grease is stored shall be free of spilled grease. The grease container shall be stored not less than 4 feet from any other vertical object such as a wall, shelving, or wood fuel stacks.”

restaurant business called “Kenny’s Carry-Out” and that the violation was caused by its lessee. The Trustee further represented that under the terms of the lease Respondent “is only responsible for basic outside maintenance (e.g., parking lot). All other aspects of the property, including all business operations, fall under the jurisdiction of the tenant to maintain.” The Respondent’s position was that the violation was in connection with the operations of the restaurant and, therefore, the fine should be levied against its lessee. However, Respondent represented that it would follow up with its lessee and make sure that the violation was attended to properly.

The Government was afforded the opportunity to respond to Respondent’s request, but it has not done so within the time allotted.

Based on the entire record in the case, I make the following findings of fact and conclusions of law:

II. Findings of Fact

Respondent the Joseph Kogok Trust owns the Property on which its lessee operates a carryout restaurant. By its answer of Admit with Explanation, Respondent has admitted that it violated the Regulation. However, Respondent has taken steps to remedy the violation caused by its lessee and there is no evidence in the record of a history of non-compliance by Respondent.

III. Conclusion of Law

Respondent’s plea of Admit with Explanation establishes that it violated the Regulation on May 22, 2002. There is a \$1,000 fine for a first offense of the Regulation. 16 DCMR §§ 3216.1(g) and 3201(a)(1).

The Regulation places primary responsibility for the proper containerization of grease held for recycling or disposal on the property owner. Accordingly, the property owner can be charged with a violation of the Regulation caused by its lessee because it is strictly liable for such a violation. See, *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202 (D.C. 1995); *DOH v. Valira Limited Partnership*, OAH No. I00-20388 at 5 (Final Order, June 6, 2002).

The *Bruno* case is analogous to the present one in. In that case a property owner was charged with a violation of 21 DCMR 700.3 for allegedly failing to properly containerize solid wastes on his property. The property owner defended on the ground, among others, that the trash had been deposited on the property by unrelated third parties. The District of Columbia Court of Appeals rejected this defense and held the property owner strictly liable for the violation. The court said:

Nor does due process require the District to establish *scienter* on the owner's part before levying the fine, any more than it must do so, say, for routine traffic violations. Civil fines may lawfully penalize regulatory infractions on the basis of **strict liability**...(Original emphasis)

Previously this administrative court has said that the rationale for holding property owners strictly liable for violations of regulations pertaining to proper solid waste containerization "is to give property owners a greater motivation to take all necessary steps to control conditions that can lead to an increase in the rat population." *DOH v. Young*, OAH No. I-00-20332 at 4-5 (Final Order, March 12, 2002). This rationale is especially apt regarding the proper containerization of used grease.

The Government in the exercise of its discretion could have charged the lessee who allegedly caused the violation, alone or jointly with Respondent. *Id.* at 3 n.2. That it did not do so, however, is not a defense to a violation charged against the property owner. Also, Respondent may have a claim against its lessee as a result of the violation pursuant to the parties' contract or the lease, but that matter is beyond the jurisdiction of this administrative court.

Respondent's argument does not warrant a suspension or reduction of the prescribed fine. However, since Respondent has taken steps to ensure future compliance with the Regulation and there is no evidence in the record of a history of non-compliance I shall reduce the fine to \$675. See D.C. Official Code §§ 2-1802(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

IV. Order

Based on the forgoing findings of fact and conclusions of law, it is this _____ day of _____ 2002:

ORDERED, that Respondent shall pay a fine in the amount of **SIX HUNDRED SEVENTY FIVE DOLLARS (\$675)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid

amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work site, pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED **08/01/02**

Robert E. Sharkey
Administrative Judge